IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

No. 64

ROBERT SWAIN,

Petitioner,

—v.—

ALABAMA.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF ALABAMA

BRIEF FOR PETITIONER

JACK GREENBERG
CONSTANCE BAKER MOTLEY
JAMES M. NABRIT, III
Suite 2030
10 Columbus Circle
New York, New York, 10019

ORZELL BILLINGSLEY, JR.
PETER A. HALL
1630 Fourth Avenue North
Birmingham, Alabama

Attorneys for Petitioner

MICHAEL MELTSNER
HENRY M. DI SUVERO
FRANK H. HEFFRON
Of Counsel

INDEX

TABLE OF CASES:

STATUTES INVOLVED:

OTHER AUTHORITIES:

IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

No. 64

ROBERT SWAIN,

Petitioner,

—v.—

ALABAMA.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF ALABAMA

BRIEF FOR PETITIONER

Opinion Below

The opinion of the Supreme Court of Alabama (R. 219) is reported at 275 Ala. 508, 156 So. 2d 368.

Jurisdiction

The judgment of the Supreme Court of Alabama was entered on September 5, 1963 (R. 236) and application for rehearing was overruled on September 26, 1963 (R. 238). On December 19, 1963, Mr. Justice Douglas extended the time for filing petition for writ of certiorari to and including February 22, 1964 (R. 239). The petition was filed February 22, 1964 and granted April 27, 1964 (R. 239).

The jurisdiction of this Court is invoked pursuant to 28 U. S. C. §1257(3), petitioner having asserted below and here the deprivation of rights secured by the Fourteenth Amendment to the Constitution of the United States.

Question Presented

Whether petitioner was denied due process of law and the equal protection of the laws in violation of the Fourteenth Amendment when indicted, convicted and sentenced by grand and petit juries in a county where

A) The State always strikes the token number of Negroes on the trial venires, with the result that Negroes never serve on trial juries, and

B) Negroes have been summoned for jury service in only token numbers and the state has offered no explanation for the small proportion called.

Constitutional and Statutory Provisions Involved

This case involves Section 1 of the Fourteenth Amendment to the Constitution of the United States.

This case also involves the following statutes which are set forth in the appendix:

18 U. S. C. §243.
Ala. Const., Art. I, §6.
Ala. Code, tit. 30, §3.
Ala. Code, tit. 30, §10.
Ala. Code, tit. 30, §12.
Ala. Code, tit. 30, §18.
Ala. Code, tit. 30, §20.
Ala. Code, tit. 30, §21.
Ala. Code, tit. 30, §24.
Ala. Code, tit. 30, §52.
Ala. Code, tit. 30, §58.
Ala. Code, tit. 30, §60.

Ala. Code, tit. 30, §64.
Ala. Code, tit. 30, §89.
Acts of Ala., Special Regular Session of 1955, Act No. 475, vol. 2, p. 1081.

Statement

The petitioner, a Negro, was indicted for rape (R. 2) and convicted in the Circuit Court of Talladega County, Alabama.[1] The jury fixed his punishment at death by electrocution (R. 213, 214). At the hearing conducted before trial on petitioner's motion to quash the indictment (R. 3), the following matters were brought out with respect to the selection of grand and petit juries.

Census Figures

The Circuit Court judicially noticed that according to the United States Census of 1960 the total population of Talladega County was 65,495. The white population was 44,425 or 68 per cent, and the nonwhite population was 20,970 or 32 per cent. The total male population over 21 was 16,406, including 12,125 whites (74 per cent) and 4,281 nonwhites (26 per cent) (R. 71).

Compilation of the Jury Roll

In Talladega County, the jury box from which grand and petit jury panels are drawn is filled every two years (R. 91) by three Jury Commissioners who are appointed by the Governor[2] and paid a nominal amount.[3] Each of the Commissioners in 1961 was self-employed (R. 50, 86, 109) and

[1] The evidence presented at trial is summarized in the opinion of the Supreme Court of Alabama (R. 220-22).

[2] Ala. Code, tit. 30, §10 (1958).

[3] Ala. Code, tit. 30, §12 (1958).

performed his duties in his spare time or in conjunction with his work. The Commissioners are assisted by a clerk who is regularly employed as a Chief Deputy Circuit Clerk (R. 74).

The Jury Commission meets twice yearly (R. 69, 100). Each Commissioner presents a list of names for approval by the Commission (R. 87-88, 111). The clerk then types a card for each person approved, listing his name, address, and occupation (R. 63, 74, 177). The clerk also has on file similar cards for persons who have served on previous juries (R. 68-69). These cards, except for persons who have become exempt or have been called for jury service within the past two years (R. 91-92), are placed with the cards made from lists presented by the Commission and are arranged in alphabetical order according to political district, or "beat" (R. 73, 177). Once every two years, the jury roll is typed up from the cards of eligible jurors, and the cards are placed in the jury box, which is first emptied (R. 174). All grand and petit jurors for the next two years are drawn from this box.[4]

Those eligible for jury service are males aged 21 or over "who are generally reputed to be honest and intelligent men and are esteemed in the community for their integrity, good character and sound judgment . . ."[5] Habitual drunkards, disabled persons, those convicted of offenses "involving moral turpitude," and illiterates who are not freeholders or householders are disqualified.[6] Persons over 65[7] and

---

[4] The procedures described above correspond substantially with the requirements of Alabama's general statute, see Ala. Code, tit. 30, §20 (1958) and the special statute governing Talladega County, see Acts of Alabama, Special Regular Session of 1955, Act No. 475, vol. 2, p. 1081 (*infra* Appendix).

[5] Ala. Code, tit. 30, §21 (1958).

[6] *Ibid.*

[7] *Ibid.*

those engaged in certain occupations may choose not to serve.

The Jury Commissioners in Talladega County make no attempt to place the names of all eligible jurors on the roll (R. 89, 117).[9] Of the 16,406 males over 21 in the County (R. 71), approximately 2500 (R. 68, 91, 177) are on the current jury roll. The Commissioners divide the County three ways, and each gathers names in his designated area (R. 106).

The Chairman of the Jury Commission testified that he obtained names of prospective jurors by going out "into the community with a list of names or roll" and checking on them (R. 52). He did not canvass from house to house but asked persons he knew in each area for suggestions (R. 106). However, he did not call on Negroes (R. 54) and his association with Negroes was generally restricted to customers in his paint store (R. 54), of whom there were "a few" Negroes (R. 102).

The Chairman testified that he had placed some Negroes on the roll (R. 58) and had talked with "just plenty of them" about the qualifications of certain persons, but could not name a single Negro on the jury roll without examining it (R. 62). The Chairman underestimated the County's Negro population stating that in his best judgment Negroes comprised 10 per cent of the population (R. 105).

A second Jury Commissioner testified that the jury roll did not include all the qualified male citizens in the County because it "would be almost impossible to get all" (R. 89). He stated that he used "the same method" for selecting

---

[8] Ala. Code, tit. 30, §3 (1958).

[9] But both the general and special statutes require that the names of all eligible persons be placed on the jury roll. See Ala. Code, tit. 30, §20 (1958); Acts of Alabama, Special Regular Session of 1955, Act No. 475, vol. 2, p. 1081.

whites as he did Negroes (R. 92), and that whether an individual met the statutory qualifications was a matter of opinion (R. 90).

He compiled lists of qualified persons by working through clubs and "different people in the community and . . . lists that they recommended" (R. 87); however, he later testified he did not go to clubs (R. 96). For Talladega City, he used the City Directory (R. 87). He also called on people in their homes and businesses and had "personal knowledge" of qualified persons (R. 90). In addition, he used REA and Farm Bureau lists (R. 93-94) and testified the Farm Bureau list contained names of whites and Negroes (R. 94). However, he subsequently stated he did not know if any Negroes were members of the Farm Bureau (R. 94). Although he was "well acquainted" with both whites and Negroes in the northern end of the County, he found it "impossible" to state in either absolute or relative terms how many Negroes he knew (R. 97).

A third Jury Commissioner testified that in securing names of qualified persons he did not "watch the color line" (R. 116). He said that the Jury Commission had not conducted a survey of the County to obtain the names of qualified persons (R. 117), and that he did not "really canvass the community" (R. 114), but went to "some leading citizen out there or some merchant that knows the people" to obtain names of qualified persons (R. 112). He also testified that the leading citizens were both white and Negro, but he could not recall any one by name (R. 112, 113). Although he claimed that he had placed a few of his Negro customers on the jury roll, he could not identify the name of one Negro customer (R. 113) or any Negro (R. 116) on the roll.

The Clerk of the Jury Commission testified that she did not go out into the County to check on the qualifications of

prospective jurors (R. 64), but she did supply names of prospective jurors to the Commission members "merely as a help" (R. 64). She compiled lists of names by using church rolls, civic club rolls, poll lists, the city directory, and the telephone directory (R. 64-65). She also contacted the managers of various plants requesting them to send her lists of names (R. 66) and she requested names from some Negroes (R. 71). She also stated that she did not solicit the use of any Negro church rolls nor did she request names from any Negro clubs (R. 66). As far as she knew, Negroes did not own any plants and all the plant managers were white (R. 66). She admitted that her acquaintance was "more or less confine[d] to the whites of Talladega" (R. 72).

Composition of Venires and Juries

Three or four grand juries are organized each year (R. 9). The grand jury venire of 50 or 60 names is drawn from the jury box by the Circuit Judge in open court (R. 11, 12, 16). These persons are summoned and approximately 35 qualified jurors without excuses appear in court (R. 11, 12, 19). Of these 35, 18 names are drawn from a hat for service on the grand jury (R. 8, 36).

The usual representation of Negroes on a grand jury venire is 10, 12, or 15 per cent (R. 10), as estimated by the Solicitor who was present during the empaneling of all grand juries since 1953 (R. 8). One or more Negroes served on 80 per cent of the grand juries drawn between 1953 and 1962 (R. 21), but no more than three Negroes ever served (R. 9, 36). In petitioner's case four or five Negroes were on the grand jury venire of 33 names and two Negroes served (R. 8, 125-26).

The petit jury venire is drawn from the jury box during the week prior to trial (R. 16). The number of names

drawn varies between 75 and 100, with large venires of 90 to 100 drawn for capital cases (R. 17, 41, 202). Approximately 10 to 15 per cent of this group fail to appear; in capital cases a rough average of 75 do appear (R. 17, 41). Some of those who appear are excused for various reasons, including challenges for cause (R. 17-18, 20). The jury is then struck from those who remain (R. 20). Alternating turns, the prosecutor strikes one name and the defense strikes two until only 12 persons remain (R. 20).[10]

The Solicitor estimated that 10 or 12 or 15 per cent of the persons on the petit jury venire are Negroes (R. 10). He has seen as few as four per cent and as many as 23 per cent (R. 10, 19).[11] He stated that the usual number of Negroes present when the striking begins is seven or eight (R. 18). The Circuit Clerk said that the number of Negroes on the venire was "usually two or three or six or seven. One time it was eleven" (R. 126). One witness said he saw seven or eight Negroes on a venire of 50 or 60 persons (R. 160), and another testified that there were usually six or seven Negroes on a petit jury venire of 35 to 40 persons (R. 40). A judge of the Intermediate Court testified that he had seen no more than six or seven Negroes on a venire, but as few as two (R. 44).

In this case, there were eight Negroes on the petit jury venire list of 100 (R. 202). Six of them were available for service but were stricken by the State (R. 202, 205, 229).

All who testified stated that no Negro had ever served on a petit jury of either a criminal or civil case in Talladega

---

[10] Ala. Code, tit. 30, §§60, 64 (1958).

[11] The occasion when 23 per cent were Negroes was a case prior to 1955 in which a Negro defendant accused of killing a Negro was offered an all-Negro jury. Thirteen Negroes were on the petit jury venire and the prosecution offered to allow him to strike any one and use the others as the jury. The offer was declined (R. 10, 19, 23).

County. This included the Circuit Solicitor (R. 13, 14, 21), five attorneys (R. 29, 35, 39, 40, 46), an Intermediate Court Judge (R. 44), the Chief Deputy Circuit Clerk (R. 76), the Chairman of the Jury Commission (R. 58), eight Negro witnesses (R. 130, 136, 150, 153, 156, 161, 165, 166) and the Circuit Clerk who had held his office for sixteen years (R. 124). The State did not contest the fact that no Negro had ever served on a petit jury (R. 183).

The Circuit Solicitor testified that the striking of a jury is done differently depending upon whether or not the defendant was of the same race as the victim of the alleged crime (R. 20). He stated that on numerous occasions he has asked defendants whether they desired to have Negroes serve; if they did not, and if he "did not see fit to use them, then we would take off. We would strike them first or take them off" (R. 20, 27). If the defendant wanted Negroes to serve, the Solicitor's response "would depend on the circumstances . . . and what I thought justice demanded and what it was in that particular case" (R. 27). In one case in which a Negro defendant was charged with the murder of another Negro, the Solicitor offered to use an all-Negro jury, but the offer was declined (R. 21, 26). The Supreme Court of Alabama found that "the evidence discloses that Negroes are commonly on trial venires but are always struck by attorneys in selecting the trial jury" (R. 229).

State's Evidence

The State called two witnesses. The first was the Secretary of the Talladega Health Department and Registrar of Vital Statistics. She testified that of the 214 illegitimate babies born in the county in 1961, 201 were Negro (R. 186-87); she also stated that of the 12 new cases of syphilis in the county in 1961, 11 were Negro (R. 188); and of the 26 new cases of gonorrhea in 1961, 19 were Negro (R. 190).

The second witness for the State was the Director of the Department of Pensions and Securities in Talladega

County. She testified that as of April 30, 1962, there were 3,316 male and female recipients of public assistance, of whom 44.6 per cent were Negro (R. 193-94). She stated that 2,205 of the recipients were "old pensioners" (R. 194), 43 were blind persons, 695 were families receiving aid to dependent children, 30 were neglected children and 342 were totally disabled persons (R. 196). It was also brought out that possession of a "homestead" or $3000 worth of property did not disqualify a person from receiving assistance (R. 195).

Summary of Argument

A. Negroes are consistently struck from trial jury panels by the prosecutor. Such racial exclusion by a representative of the state violates the Fourteenth Amendment, which prohibits systematic exclusion from jury service regardless of the manner in which it is accomplished. There is no justification for concluding that prohibition of racial strikes by the prosecutor would interfere with the usefulness of the peremptory challenge. No state can subvert the constitutional and statutory policy against racial discrimination or ensure that juries will be unrepresentative of the community. The challenges of the state have never been considered absolute and, in fact, were conceived to assist in the selection of an impartial jury, an end which the state's use of challenges makes impossible to achieve. Finally, the state has not even used its strikes for an end legitimately related to the litigation, but habitually strikes Negroes because they are Negroes and for no other reason.

B. Although Negroes comprise 26 per cent of the eligible jurors, they play only a token role in the jury system of Talladega County. No Negro has ever served on a criminal or civil jury in the county. Haphazard procedures

followed by the Jury Commissioners, some in violation of state statute, favor selection of whites. The state recognized its duty to explain the relatively small number of Negroes on the venires but produced only irrelevant statistics and did not meet its burden of proof under the Fourteenth Amendment. The holding of the Supreme Court of Alabama that petitioner must establish affirmatively that Negroes are as qualified as whites in order to make out a successful showing of exclusion conflicts with numerous decisions of this Court.

ARGUMENT

Negroes Have Been Excluded From Jury Service in Talladega County in Violation of Petitioner's Rights Under the Due Process and Equal Protection Clauses of the Fourteenth Amendment.

A. Negroes Are Unconstitutionally Excluded From Jury Service in That the State Always Strikes the Token Number of Negroes on the Trial Venires With the Result That Negroes Never Serve on Trial Juries.

Negroes have been placed on the jury venires of Talladega County in such token numbers that they may be "always struck by attorneys in selecting the trial jury" (R. 229). Using the strikes authorized by Ala. Code, tit. 30, §§60, 64 (1958), the Solicitor strikes one juror and the defendant strikes two from trial jury venires in all criminal cases (if there are two or more defendants, each has one strike) until there are only twelve jurors remaining. These twelve constitute the trial jury. No Negro has ever served on a trial jury in a criminal or civil case in the county, and all the Negroes on petitioner's jury venire were struck, because the Solicitor invariably exercises his strikes to remove Negroes summoned for jury service.

The state has, therefore, excluded Negroes contrary to the "unbroken line of cases" in which this Court has held a criminal defendant's Fourteenth Amendment rights violated "if he is indicted by a grand jury or tried by a petit jury from which members of his race have been excluded because of their race" *Eubanks* v. *Louisiana*, 356 U. S. 584, 595. For the rule is not qualified by the form or the perpetrator of the exclusion, *id.* at 356 U. S. 587. The Constitution is violated *"by any action* of a state, whether through its legislature, through its courts, or through its executive or administrative officers," which results in exclusion of Negroes *"from serving"* on juries. *Carter* v. *Texas*, 177 U. S. 442, 447 (emphasis supplied); *Norris* v. *Alabama*, 294 U. S. 587, 589. "If there has been discrimination, whether accomplished ingeniously or ingenuously, the conviction cannot stand" *Smith* v. *Texas*, 311 U. S. 128, 132.

Despite these principles and the intentional, systematic exclusion of Negroes from trial jury service because of race by a public official (accountable for his conduct under the Fourteenth Amendment, see, e.g., *Napue* v. *Illinois*, 360 U. S. 204; *Hamilton* v. *Alabama*, 376 U. S. 650),[12] the Supreme Court of Alabama approved the practice of the Circuit Solicitor of always striking Negroes. The court, adopting language from a Michigan case, *People* v. *Roxborough*, 307 Mich. 575, 12 N. W. 2d 446 (1943), held that the utility of peremptory strikes would be impaired if any limitation were placed on the state's challenge to prospective jurors (R. 230):

---

[12] Cf. *Berger* v. *United States*, 295 U. S. 78, 89, where this Court reversed on the ground that "the misconduct of the prosecuting attorney . . . was pronounced and persistent; with a probable cumulative effect upon the jury which cannot be disregarded as inconsequential."

> "The reason counsel may have for exercising peremptory challenges is immaterial. The right has been granted by law and it may be exercised in any manner deemed expedient and such action does not violate any of the constitutional rights of an accused. It would do away with the basic attribute of the peremptory challenge because if such argument is accepted in all cases involving defendants of the Negro race, the prosecutor, upon challenging prospective jurors of that race, would either have to assign a cause for such challenge or take the risk of a new trial being granted on the ground that he discriminated because of color; as a result no one could safely peremptorily challenge a juror where the defendant was of the same race as the juror. . . . "

There is no reason to believe, however, that a prosecuting attorney, upon challenging prospective Negro jurors, would "have to assign a cause for such challenge" (R. 230) or be highly subject to reversal "on the ground that he discriminated because of color" (R. 230). It is one thing for a prosecutor to strike a Negro because he does not desire him as an individual to serve on a particular trial jury or juries, and quite another for an official of the state, as here, to strike all Negroes from trial juries pursuant to a notorious practice of always excluding Negroes regardless of the character of the individual or the case. The Jury Commission of Talladega County may not exclude Negroes from jury service, but the Commission does not "assign a cause" for failing to place Negroes on the jury rolls. No prosecutor who does not engage in a systematic policy of striking jurors on account of race need fear reversal for striking the Negroes on particular panels. A prosecuting attorney will always be in a position to adduce proof that Negroes are not systematically struck without great difficulty. Cf. *Pierre* v. *Louisiana*, 306 U. S. 354, 361, 362. Such proof

would, of course, refute any "logical inference to be drawn," *Hernandez* v. *Texas*, 347 U. S. 475, 480, from evidence of a prosecutor's conduct in any one case in the same manner as it would with respect to a Jury Commission. *Ibid.* See *Norris* v. *Alabama*, 294 U. S. 587, 590-92, 598-99. The fears of the Supreme Court of Alabama that "no one could safely peremptorily challenge a juror where the defendant was of the same race as the juror" (R. 230) are unfounded.

But whatever the risks of prohibiting racial strikes, they are preferable to permitting a high public official[13] to undermine the constitutional requirement that no distinct group be excluded from jury service.[14] Use of peremptory strikes by public officials is a common method of insuring exclusion of Negroes from jury service (1961 Commission on Civil Rights Report, Vol. 5, pp. 93, 99) which reduces the practical effect of the Fourteenth Amendment and 18 U. S. C. §243,[15] and principles enunciated by decisions of

---

[13] The injury to constitutional administration of criminal justice is all the greater when the racial policy attacked is injected into the criminal process by an officer of the court with duties and responsibilities to the public. See, e.g., Canon 5, Canons of Professional Ethics of the American Bar Association. The Circuit Solicitor is the official in Alabama who supervises the proceedings of grand juries, draws up indictments, and prosecutes indictable offenses. Code of Ala. tit. 13, §229 (1958). Solicitors devote their entire time to the discharge of the duties of the office and are prohibited from practicing law in any other manner. *Ibid.*

[14] It is clear that, in Alabama, the Solicitor actively participates in the process of selecting the trial jury. Ala. Code tit. 30, §§60, 64 (1958). The prosecutor is responsible for striking a large number of jurors whether or not he has any objection to them, for he is required to strike down to the number of 12 regardless of whether he objects to the jurors remaining on the venire.

[15] Exclusion from jury service on account of race has been prohibited by federal statute since the Civil Rights Act of 1875. 18 U. S. C. §243 (formerly 8 U. S. C. §44) is written in broad terms which certainly apply to exclusion by use of strikes, see *Fay* v. *New York*, 332 U. S. 261, 282-4:

> No citizen possessing all other qualifications which are or may be prescribed by law shall be disqualified for jury service as

this Court, to the ritual of placing Negroes on a venire without any possibility of actual jury service. "The rule against excluding Negroes from the panel has no value if all who get on the panel may be systematically kept off the jury" (Edgerton, *J.*, dissenting). *Hall* v. *United States*, 168 F. 2d 161, 166 (D. C. Cir. 1948), cert. denied 334 U. S. 853.[16]

The Supreme Court of Alabama (R. 230) and the State, in its Brief in Opposition to Certiorari, take the position that the right to strike granted by Ala. Code, tit. 30, §§60, 64 (1958) is absolute and may, therefore, be employed by a prosecutor to exclude Negroes from jury service on account of race. This conclusion is at war with the history of

---

grand or petit juror in any court of the United States, or of any state on account of race, color, or previous condition of servitude; and whoever being an officer or other person charged with any duty in the selection or summoning of jurors excludes or fails to summon any citizen for such cause shall be fined not more than $5,000.

[16] In *Hall* v. *United States*, 168 F. 2d 161 (D. C. Cir. 1948) cert. denied 334 U. S. 853, Negro defendants objected to the Government's peremptory challenge of all nineteen Negro members of the panel. There was no express finding that Negroes had been struck on account of race, no claim of systematic exclusion of Negroes from the venire, and no evidence of a practice of regularly striking Negroes from jury panels so that they would never serve. The court in *Hall*, 168 F. 2d at p. 164, found:

> The due process clause of the Fifth Amendment would be invokable if the authorities charged with the duty of selecting jurors had systematically excluded Negroes from the panel. The requirements of due process were met when there was no racial discrimination in the selection of the veniremen. The government . . . was entitled to exercise twenty peremptory challenges . . . without assigning, or indeed without having any reason for doing so.

Judge Edgerton, dissenting, disagreed with the majority in that he found the government "impliedly admits", 168 F. 2d at 166, that Negroes were systematically excluded from the trial jury by use of strikes and concluded that the use of peremptory challenges violated a federal statute as well as the due process clause of the Fifth Amendment.

the peremptory strike and the values which have been given content by the constitutional prohibition against exclusion. The grant of peremptory challenges to the *State*, for example, has always been subject to restriction "by the necessity of having an impartial jury" and "the constitutional right of the accused" under the Fourteenth Amendment. *Hayes* v. *Missouri*, 120 U. S. 580. In England, the right of peremptory challenge in the Crown was abolished by statute in 1305, 33 Edward I, Statute 4, only to be reintroduced, on a modified basis, by rule of court. *Hayes* v. *Missouri*, *supra*.

The conduct of the Solicitor, approved by the Supreme Court of Alabama, alters the fundamental character of the jury system by ensuring that all trial juries are unrepresentative of a cross-section of the community. So long as the State is totally unrestricted in its use of strikes, no minority is safe from complete exclusion from actual jury service. But juries unrepresentative of the community distort "basic concepts of a democratic society and a representative government." *Smith* v. *Texas*, 311 U. S. 128, 130; *Thiel* v. *Southern P. Co.*, 328 U. S. 217, 220; *Ballard* v. *United States*, 329 U. S. 187, 195.

Strauder v. *West Virginia*, 100 U. S. 303, recognized that exclusion of Negroes from juries "is practically a brand upon them, affixed by law; an assertion of their inferiority, and a stimulant to that race prejudice which is an impediment to securing to individuals of the race that equal justice which the law aims to secure to all others" (100 U. S. at 308). Cf. *Hamilton* v. *Alabama*, 376 U. S. 650. By striking all Negroes as a matter of course, the Solicitor places the authority of the State and his office[17] behind racial

[17] The Alabama Court of Appeals has often described the duties and responsibilities of the Circuit Solicitor as follows:

> The office of Solicitor is of the highest importance; he is the representative of the State and as a result of the important

prejudice in the presence of the tribunal which determines the guilt of and—in the case of petitioner—sentences a Negro defendant.

The Solicitor indicated that he frequently asks defendants whether or not they want Negroes on the jury, and if not, the prosecutor and defense attorney "take them off" or "strike them first" (R. 20, 27). This evidence establishes that Negroes are set apart; treated differently; and by this pattern of treatment affixed with a brand of inferiority.

A petit jury is duty bound to find the facts and apply the law in an impartial manner. Ala. Const., Art. I, §6 (1901); Ala. Code, tit. 30, §§52, 58. Challenges are permitted in order to obtain an unbiased jury. Challenges for cause are designed to allow the removal of persons with easily identifiable bias. Peremptory challenges are a means of allowing removal of persons suspected of bias, and a lawyer may rely on mere whim or intuition in the exercise of peremptory challenges. But in Talladega County the peremptory challenge has been badly perverted.

The record is clear that the striking of Negroes has nothing to do with the strategy of particular litigation or an appraisal of the qualifications or interest of any individual Negro. Negroes are struck without exception because they are Negroes and for no other reason. It is not even pre-

---

functions devolving upon him as such officer necessarily holds and wields great power and influence, and as a consequence erroneous insistence and prejudicial conduct upon his part tend to unduly prejudice and bias the jury against the defendant; this without reference to the restrictions of the court. *The test in matters of this kind is not necessarily that the conduct of our Solicitor complained of did have such an effect upon the jury but might it have done so?* (Emphasis supplied.)

Taylor v. *State*, 22 Ala. App. 428, 116 So. 415-416; *Johnson* v. *State*, 23 Ala. App. 493, 127 So. 681, 682; *Bynum* v. *State*, 35 Ala. App 297, 47 So. 2d 245.

sumed by the State that all Negroes will vote to acquit a Negro, even if charged with a crime against a white person. In this very case the Attorney-General argues that Negro defendants do not want to be tried by juries containing Negroes because of a belief that they will be treated more harshly than by whites and that Negro jurors often vote to convict. Thus, the Supreme Court of Alabama has sanctioned a consistent practice, engaged in by the representative of the State in its courts, of excluding Negroes from juries not because of a belief that striking Negroes will increase the chances of winning a given case, or provide an impartial jury, but pursuant to, and in support of, a theory of racial inferiority.

B. Negroes Have Been Summoned for Jury Service in Only Token Numbers and the State Has Offered No Explanation of the Small Proportion Called.

Negroes constitute more than one-fourth of the total number of males over 21 years of age residing in Talladega County, Alabama, but no Negro has ever served on a petit jury in either a civil or criminal case (*supra* pp. 8-9). No more than three Negroes have served on the grand jury of 18[18] (R. 9, 36). Usually the number is less, and approximately 20 per cent of the time there are no Negroes at all on the grand jury (R. 21). On grand and petit jury venires Negro representation averages from 10 to 15 per cent of the total (R. 10, 19). In petitioner's case eight Negroes were called (six were available) to serve on the trial venire of one hundred (R. 202) and none served on his trial jury as a result of strikes exercised by the Solicitor (R. 205, 229). There were four to five Negroes on the grand jury venire, two of whom served on the grand jury (R. 8, 36).

---

[18] Twelve votes are necessary for the grand jury to indict. Code of Ala., tit. 30, §89 (1958).

The Supreme Court of Alabama concluded that a sufficient number of Negroes were on the jury rolls because "from 10 per cent to 23 per cent of the members of the grand jury panels in the past several years have been Negroes" (R. 228). From the Solicitor's testimony, however, it is clear that the 23 per cent figure referred to a petit jury venire, rather than grand jury venire, and was restricted to one rather extraordinary occasion.[19] The Solicitor also testified that the number of Negroes on the venires *ranged* from 4 per cent (rather than 10 per cent) to 23 per cent (R. 19) and *averaged* from 10 to 15 per cent (R. 10).

These decided variations between Negro and white participation in the jury system of Talladega County and the Negro and white proportions of the total number of eligible jurors, if unexplained by the State, are sufficient evidence of unconstitutional racial discrimination in the selection of jurors. There may be no precise "formula for determining when 'tokenism' ends and 'fair' representation begins", as was said by the Supreme Court of Alabama (R. 229), but the State must surely offer some explanation of why the proportion of Negroes on grand and petit jury venires averages at most one-half of the proportion of eligible Negroes in the population. (Cf. *Speller* v. *Allen*, 344 U. S. 443, 481, where the Court would not accept, unless explained, a jury box in which Negroes constituted only 7 per cent of the jurors when Negroes constituted 38 per cent of those eligible.) Although they represent 26 per cent of those eligible, Negro participation in the jury system of the county has been limited to the extent that Negroes play almost no role in the actual process of indicting, trying or sentencing persons charged with crime.

---

[19] See note 11, *supra*.

Petitioner adduced evidence tending to show that the Jury Commissioners followed selection procedures, some in violation of state statute, which naturally tended to restrict Negro participation in the jury system. For example, only white church rolls and civic club lists were used to obtain the names of prospective jurors (R. 66). The all-white Board of Jury Commissioners relied heavily on personal contacts with friends, acquaintances and customers in selecting names for the jury roll and these contacts were predominantly with white persons (R. 97, 102, 113, 116). One Commissioner demonstrated unfamiliarity with the Negro community by testifying that his estimate of the proportion of Negroes in the population was 10 per cent (R. 105). The Clerk of the Commission, who helped gather names of prospective jurors, acknowledged that her acquaintance was "more or less" confined to whites (R. 72).

Further evidence of the Commission's failure to familiarize itself with the qualifications of Negro residents is found in the fact that the Commission did not place the names of every person possessing the qualifications on the jury rolls (R. 89, 117), although this is required by state statute, Ala. Code, tit. 30, §24 (1958). Neither the Jury Commission nor its clerk undertook a systematic survey or canvass of the County, or visited every precinct as required by §24, in order to obtain the names of every qualified juror (R. 89, 117). The Supreme Court of Alabama excused the Commission's failure to abide by the statute on the ground that "no evidence was presented that only Negroes had been left off. The means employed by the Jury Commission for acquiring names for the rolls simply were not exhaustive enough to insure the inclusion of all qualified persons, be they white or Negro" (R. 229).

But the failure of the Commissioners to employ "means" which were "exhaustive enough to insure the inclusion of

all qualified persons" obviously worked to exclude a higher proportion of Negroes than whites because the Commissioners selected on the basis of acquaintance and were not as familiar with the Negro as with the white citizens of the County. This is a case, therefore, where the Jury Commissioners selected prospective jurors on the basis of personal acquaintance and did not perform "their duty to familiarize themselves fairly with the qualifications of the eligible jurors of the county without regard to race." *Cassell* v. *Texas,* 339 U. S. 282, 290; *Hill* v. *Texas,* 316 U. S. 400, 404; *Smith* v. *Texas,* 311 U. S. 128, 132.

The only evidence offered by the State falls far short of accounting for the gap between the number of Negroes serving on jury venires and the Negro proportion of the population. Although the Supreme Court of Alabama affirmed petitioner's conviction, it did not so much as mention the evidence submitted by the State in attempted explanation of the low proportion of Negroes on the venires. This evidence consisted of inconclusive statistics regarding cases of syphilis and gonorrhea, illegitimacy, and receipt of public assistance in the County.

The statistics offered have tenuous, if any, relation to the statutory qualifications of jurors. See Ala. Code, tit. 30, §21 (1958). Alabama has made no attempt by statute to exclude from jury service persons suffering from venereal disease, fathering illegitimate children or receiving public welfare funds. While all three Jury Commissioners and the Clerk of the Commission testified at the hearing on the motion to quash, there is no evidence that any person, white or Negro, has ever been excluded from jury service on these grounds. The State apparently took the view that these statistics indicate that many Negroes in Talladega County were of questionable integrity and character and, therefore, less qualified for jury service (R. 188, 189), but

none of the Jury Commissioners testified they took such information into account when considering the qualifications of prospective jurors. Cf. *Speller* v. *Allen*, 344 U. S. 443, 481.

The record does not reveal the theory upon which the State would connect a contagious or congenital disease, poverty, or cases of illegitimacy to character. But regardless of their relevance, the statistics offered by the State regarding disease,[20] poverty,[21] and illegitimacy[22] do not establish that any significant percentage of Negroes are not qualified for jury service.

Thus the State presented no evidence on which even an inference can be based establishing a legitimate ground for

---

[20] The most that the evidence as to syphilis and gonorrhea showed was that 10 or 11 more Negroes than whites contracted syphilis (R. 188) and 12 more Negroes than whites contracted gonorrhea during 1961 (R. 190). Even assuming that these statistics refer to males over 21 (and the record does not show this to be the case), evidence that 22 more Negroes than whites contracted venereal disease in 1961 (R. 190) does not explain the decided variation between the Negro and white proportions on jury venires in a county with more than 16,000 males over 21. The State's position that these statistics cover all cases of venereal disease occurring during the year (R. 190), nullifies any possible claim that they represent a mere sample.

[21] Viewed most favorably for the State, the evidence on receipt of public assistance showed that 44.6 per cent of recipients were Negroes although Negroes constituted only 32 per cent of the population. However, Alabama has no property test for jurors, except to the extent that illiterates must be householders or freeholders. Ala. Code, tit. 30, §21 (1958). (Some householders are eligible for public assistance (R. 195).) In the absence of evidence on the rate of illiteracy, no inference can be drawn that a larger proportion of Negroes than whites are ineligible for jury service because of poverty. Moreover, the statistics offered by the State do not classify recipients according to sex.

[22] With respect to illegitimate births, the statistics offered fail to reveal the race, age or residence of the fathers of illegitimate children (R. 186-87) and so prove nothing of the character or integrity of Negro males over 21 in the County.

ineligibility of an appreciable number of otherwise qualified Negroes. "Had there been evidence obtainable to contradict and disprove the testimony offered by petitioner, it cannot be assumed that the State would have refrained from introducing it" *Pierre* v. *Louisiana,* 306 U. S. 354, 461.

The Supreme Court of Alabama supplied its determination that petitioner had not established a prima facie case of jury discrimination on the ground that "no evidence as to the educational level of the general Negro population was offered in support of appellant's position" (R. 229). This ruling that a prima facie case of systematic exclusion requires an affirmative showing by petitioner that Negroes are as qualified as whites to serve on juries is in direct conflict with the decisions of this Court. In *Norris* v. *Alabama,* 294 U. S. 587, 591, the Court found a prima facie case, which the state must refute, on evidence that although Negroes were a distinct group in the county, no Negro had ever *served* on a jury. "This testimony in itself made out a *prima facie* case" and "the case thus made was *supplemented* by direct testimony that specified Negroes, thirty or more in number, were qualified for jury service," *Norris* v. *Alabama,* 294 U. S. at 591 (emphasis supplied). See also *Patton* v. *Mississippi,* 332 U. S. 463, 466. The holding of the Supreme Court of Alabama assumes that Negroes are less qualified and, therefore, must prove they are as qualified as whites. But in *Speller* v. *Allen,* 344 U. S. 443, 481, the Court would not assume, without evidence from the State, that "there is not a much larger percentage of Negroes with qualifications of jurymen"; and in *Cassell* v. *Texas,* 339 U. S. 282, 289, this Court said " . . . with no evidence to the contrary, we must assume that a large proportion of the Negroes of Dallas County met the statutory requirements for jury service." See also *Hill* v. *Texas,* 316 U. S. 400, 404.

CONCLUSION

WHEREFORE, for the foregoing reasons, petitioner prays that the judgment of the court below be reversed.

Respectfully submitted,

JACK GREENBERG
CONSTANCE BAKER MOTLEY
JAMES M. NABRIT, III
Suite 2030
10 Columbus Circle
New York, New York, 10019

ORZELL BILLINGSLEY, JR.
PETER A. HALL
1630 Fourth Avenue North
Birmingham, Alabama

Attorneys for Petitioner

MICHAEL MELTSNER
HENRY M. DI SUVERO
FRANK H. HEFFRON
Of Counsel

APPENDIX

APPENDIX

Statutes Involved

18 U. S. C. §243

No citizen possessing all other qualifications which are or may be prescribed by law shall be disqualified for service as grand or petit juror in any court of the United States, or of any State on account of race, color, or previous condition of servitude; and whoever, being an officer or other person charged with any duty in the selection or summoning of jurors, excludes or fails to summon any citizen for such cause, shall be fined not more than $5,000.

Ala. Const., Art. I, §6

That in all criminal prosecutions, the accused has a right to be heard by himself and counsel, or either; to demand the nature and cause of the accusation; and to have a copy thereof; to be confronted by the witnesses against him; to have compulsory process for obtaining witnesses in his favor; to testify in all cases, in his own behalf, if he elects so to do; and, in all prosecutions by indictment, a speedy, public trial, by an impartial jury of the county or district in which the offense was committed; and he shall not be compelled to give evidence against himself, nor be deprived of life, liberty, or property, except by due process of law; but the legislature may, by a general law, provide for a change of venue at the instance of the defendant in all prosecutions by indictment, and such change of venue, on application of the defendant, may be heard and determined without the personal presence of the defendant so applying therefor; provided, that at the time of the application for the change of venue, the defendant is imprisoned in jail or some legal place of confinement.

Ala. Code, tit. 30, §3 (1958)

§3. Persons exempt from jury duty.—The following persons are exempt from jury duty, unless by their own consent: Judges of the several courts; attorneys at law during the time they practice their profession; officers of the United States; officers of the executive department of the state government; sheriffs and their deputies; clerks of the courts and county commissioners; regularly licensed and practicing physicians; dentists; pharmacists; optometrists; teachers while actually engaged in teaching; actuaries while actually engaged in their profession; officers and regularly licensed engineers of any boat plying the waters of this state; passenger bus driver-operators, and driver-operators of motor vehicles hauling freight for hire under the supervision of the Alabama public service commission; railroad engineers, locomotive firemen, conductors, train dispatchers, bus dispatchers, railroad station agents, and telegraph operators, when actually in sole charge of an office; newspaper reporters while engaged in the discharge of their duties as such; regularly licensed embalmers while actually engaged in their profession; radio broadcasting engineers and announcers when engaged in the regular performance of their duties; the superintendents, physicians, and all regular employees of the Bryce hospital in Tuscaloosa county and the Searcy hospital in Mobile county; officers and enlisted men of the national guard and naval militia of Alabama, during their terms of service and convict and prison guards while engaged in the discharge of their duties as such.

Ala. Code, tit. 30, §10 (1958)

§10. Members to be appointed by governor.—The governor shall appoint the members of the several jury commissions who shall constitute said several commissions . . .

Ala. Code, tit. 30, §12 (1958)

§12. Salaries of members.—Each member of the jury commission shall be paid the sum of five dollars per day for the time actually engaged in the discharge of his duties as such member, to be paid out of the county treasury upon the warrant of the probate judge of the county. . . . but the compensation of each member of the commission shall not exceed for any year of his term the following amounts; In counties of twenty-five thousand population or less one hundred dollars; in counties exceeding twenty-five thousand and not exceeding fifty thousand population two hundred dollars; in counties exceeding fifty thousand and not exceeding sixty thousand population three hundred dollars; and in counties exceeding sixty thousand population six hundred dollars; the population of said respective counties to be determined by the last preceding federal census.

Ala. Code, tit. 30, §18 (1958)

§18. Duties of clerk. The clerk of the jury commission shall, under the direction of the jury commission obtain the name of every male citizen of the county over twenty-one and under sixty-five years of age and their occupation, place of residence and place of business, and shall perform all such other duties required of him by law under the direction of the jury commission.

Ala. Code, tit. 30, §20 (1958)

§20. Jury roll and cards.—The jury commission shall meet in the court house at the county seat of the several counties annually, between the first day of August and the twentieth day of December and shall make in a well bound book a roll containing the name of every male citizen living in the county who possessed the qualifications herein prescribed and who is not exempted by law from serving on

juries. The roll shall be arranged alphabetically and by precincts in their numerical order and the jury commission shall cause to be written on the roll opposite every name placed thereon the occupation, residence and place of business of every person selected, and if the residence has a street number it must be given. Upon the completion of the roll the jury commission shall cause to be prepared plain white cards all of the same size and texture and shall have written or printed on the cards the name, occupation, place of residence and place of business of the person whose name has been placed on the jury roll; writing or printing but one person's name, occupation, place of residence and of business on each card. These cards shall be placed in a substantial metal box provided with a lock and two keys, which box shall be kept in a safe or vault in the office of the probate judge, and if there be none in that office, the jury commission shall deposit it in any safe or vault in the court house to be designated on the minutes of the commission; and one of said keys thereof shall be kept by the president of the jury commission. The other of said keys shall be kept by a judge of a court of record having juries, other than the probate or circuit court, and in counties having no such court then by the judge of the circuit court, for the sole use of the judges of the courts of said county needing jurors. The jury roll shall be kept securely and for the use of the jury commission exclusively. It shall not be inspected by anyone except the members of the commission or by the clerk of the commission upon the authority of the commission, unless under an order of the judge of the circuit court or other court of record having jurisdiction.

Ala. Code, tit. 30, §21 (1958)

Qualifications of persons on jury roll.—The jury commission shall place on the jury roll and in the jury box the names of all male citizens of the county who are gener-

ally reputed to be honest and intelligent men and are esteemed in the community for their integrity, good character and sound judgment; but no person must be selected who is under twenty-one or who is an habitual drunkard, or who, being afflicted with a permanent disease or physical weakness is unfit to discharge the duties of a juror; or cannot read English or who has ever been convicted of any offense involving moral turpitude. If a person cannot read English and has all the other qualifications prescribed herein and is a freeholder or householder his name may be placed on the jury roll and in the jury box. No person over the age of sixty-five years shall be required to serve on a jury or to remain on the panel of jurors unless he is willing to do so.

Ala. Code, tit. 30, §24 (1958)

§24. Duty of commission to fill jury roll; procedure; etc.—The jury commission is charged with the duty of seeing that the name of every person possessing the qualifications prescribed in this chapter to serve as a juror and not exempted by law from jury duty, is placed on the jury roll and in the jury box. The jury commission must not allow initials only to be used for a juror's name but one full Christian name or given name shall in every case be used and in case there are two or more persons of the same or similar name, the name by which he is commonly distinguished from the other persons of the same or similar name shall also be entered as well as his true name. The jury commission shall require the clerk of the commission to scan the registration lists, the lists returned to the tax assessor, any city directories, telephone directories and any and every other source of information from which he may obtain information, and to visit every precinct at least once a year to enable the jury commission to properly perform the duties required of it by this chapter. In counties

having a population of more than one hundred and eighteen thousand and less than three hundred thousand, according to the last or any subsequent federal census, the clerk of the jury commission shall be allowed an amount not to exceed fifty dollars per calendar year to defray his expenses in the visiting of these precincts, said sum or so much thereof as is necessary to be paid out of the respective county treasury upon the order of the president of the jury commission.

Ala. Code, tit. 30, §52 (1958)

Examination of jurors.—In civil and criminal cases, either party shall have the right to examine jurors as to their qualifications, interest, or bias that would affect the trial of the case, and shall have the right, under the direction of the court, to examine said jurors as to any matter that might tend to affect their verdict.

Ala. Code, tit. 30, §58 (1958)

Oath of petit juror.—The following oath must be administered by the clerk, in the presence of the court, to each of the petit jurors: "You do solemnly swear (or affirm, as the case may be) that you will well and truly try all issues, and execute all writs of inquiry, which may be submitted to you during the present session (or week, as the case may be), and true verdicts render according to the evidence—so help you God;" and the same oath must be administered to the talesman, substituting the word "day" for "session."

Ala. Code, tit. 30, §60 (1958)

§60. Mode of selecting and empaneling juries in criminal cases other than capital cases.—In every criminal case the jury shall be drawn, selected and empaneled as follows:

Upon the trial by jury in any court of any person indicted for a misdemeanor, or felonies not punished capitally, or in case of appeals from lower courts, the court shall require two lists of all the regular jurors empaneled for the week, who are competent to try the defendant, to be made and the solicitor shall be required first to strike from the list the name of one juror and the defendant shall strike two, and they shall continue to strike off names alternately until only twelve jurors remain on the list, and these twelve thus selected shall be the jury charged with the trial of the case.

Ala. Code, tit. 30, §64 (1958)

§64. Voir dire examination of jurors as to qualifications; mode of striking in capital cases.—On the day set for the trial if the cause is ready for trial, the court must inquire into and pass upon the qualifications of all the persons who appear in court in response to the summons to serve as jurors, and shall cause the names of all those whom the court may hold to be competent jurors to try the defendant or defendants to be placed on lists, and if there is only one defendant on trial shall require the solicitor to strike off one name and the defendant strike off two names, and in case there are two or more defendants on trial, the solicitor shall strike one and every defendant shall strike one name, and they shall in this manner continue to strike names from the list until only twelve names remain thereon. The twelve thus selected shall be sworn and empaneled as required by law for the trial of the defendant or defendants.

Ala. Code, tit. 30, §89 (1958)

§89. Indictment; concurrence of twelve jurors necessary; how indorsed.—The concurrence of at least twelve grand jurors is necessary to find an indictment; and when so found it must be indorsed "a true bill," and the indorsement signed by the foreman.

Acts of Ala., Special Regular Session of 1955, Act No. 475, vol. 2, p. 1081.

Section 1. Unless sooner required by order of the presiding Judge of the Circuit Court, the Jury Commission of Talladega County shall meet in the county courthouse in Talladega on the first Monday of October, 1955, and on said day each two years thereafter, make in a well bound book a roll containing the name of every male citizen living in the county who possesses the qualifications prescribed by law and who is not exempted by law from serving on juries. The roll shall be arranged alphabetically and by precincts in their numerical order and the jury commission shall cause to be written on the roll opposite every name placed thereon their name, occupation and place of business of every person selected and if the residence has a street number, it must be given. Upon completion of the roll, the Jury Commission shall cause to be prepared plain white cards, all of the same size and texture and shall have written or printed on the cards the name, occupation, place of residence and place of business of the persons whose name has been placed on the jury roll; writing or printing but one person's name, occupation, place of residence and of business on one card. When the cards have been so prepared, the Jury Commission shall then segregate, remove and set aside the cards bearing the names of all jurors who served as jurors during the two years next preceding September 15th of that year. The names of the jurors on the cards so removed shall continue on the rolls as qualified jurors, but the cards shall not then be placed in the jury box, but shall be retained as a reserve to be used as hereinafter provided. All other cards prepared as herein provided, shall then be placed in a substantial metal box provided with a lock and two keys, which box shall be kept in a safe or vault in the office of the Probate Judge, and if

there be none in that office, the Jury Commission shall deposit it in any safe or vault in the Court House to be designated on the minutes of the Commission, and one of said keys thereof shall be kept by the President of the Jury Commission. The other of said keys shall be kept by the Presiding Judge of the Circuit Court for the sole use of the Judges of the Courts of said county needing jurors. The jury roll shall be kept securely and for the use of the Jury Commission exclusively. It shall not be inspected by anyone except the members of the Commission or by the Clerk of the Commission upon authority of the Commission, unless under an order of a Judge of the Circuit Court or other court of record having jurisdiction.

Section 2. Whenever the names in the jury box are exhausted or so far depleted that they will probably be exhausted at the next drawing of jurors; or whenever it shall appear to the Presiding Judge of the Circuit Court or Court of like jurisdiction that the jury box is so nearly exhausted as to require refilling, and the said Judge shall notify the President of the Jury Commission; the said Jury Commission shall thereupon place into the jury box all cards containing the names of jurors as prepared under the provisions of this Act in Section 1 and which have been withheld from the box when filled and set aside as a reserve. Provided, however, that in placing the cards held as a reserve in the box the Jury Commission may delete and withhold the cards of the names of any jurors who have died or have otherwise become disqualified from serving as jurors.

Section 3. Notices of the requirement of the attendance of jury service may be served by registered mail, or may be served as provided by Section 33 of Title 30, Code of Alabama of 1940. Should in the discretion of the sheriff the service be made by registered mail, such service shall

be as follows: It shall be the duty of the Sheriff of the County to enclose the summons in an envelope addressed to the person to be served and place all necessary postage thereon and demand a return receipt. When a return receipt, signed by the addressee is returned to the sheriff by the post office department of the United States the sheriff shall thereupon mark the process executed and it shall be considered for all purposes as sufficient personal and legal service. In the event said jury summons so mailed should be returned to the sheriff by the post office department of the United States without delivery to the addressee then the sheriff shall immediately make every effort personally to serve said summons. The provisions of this section in reference to service by registered mail, however, shall not apply to jury summons returnable before the court instanter, but such summonses shall be served only as provided by Section 33 of Title 30, Code of Alabama of 1940.

Section 4. The clerks of the several courts in which juries are empaneled shall, from time to time as the juries are empaneled, certify to the Jury Commission the names of all persons so empaneled, and the Clerk of the Commission, under the direction of the Commission, shall note opposite the names of such persons on the jury roll the date on which and the court in which they were empaneled.

Section 5. The clerks of the several courts shall also certify to the Jury Commission the names of all persons who have been found by the Court to be disqualified or exempt, which fact shall be noted opposite their respective names on the jury roll.

Section 6. Any authority, right, power and duty heretofore imposed by law on the Jury Commission of the county or the clerk thereof, and which is not by this Act specifically repealed, shall hereafter be exercised or per-

formed by the Jury Commission or the clerk thereof, respectively.

Section 7. That all laws in conflict with any of the provisions of this Act be and the same are hereby repealed, it being the intent of the Legislature that the subjects covered by this Act be the exclusive law on such subjects in Talladega County. Provided, however, nothing contained in this Act shall be construed to limit the present authority of the Judge of the Circuit Court or other Court of like jurisdiction from exercising any of the power given such Judge under Title 30, Section 22 of the Code of Alabama 1940.

Section 8. That in the event any section, clause or provision of this Act shall be declared invalid or unconstitutional, it shall not be held to affect any other section, clause or provision of this Act, but the same shall remain in full force and effect.

Section 9. This Act shall take effect immediately upon its passage and approval by the Governor.